

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

DARLENE MYRICK,)
v. Plaintiff,)
LOWE'S HOME CENTERS, LLC &) Case No. 6:17-cv-3266
JOHN DOE,)
Defendants.) **JURY TRIAL DEMANDED**

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§1332, 1441, and 1446, Defendant Lowe's Home Centers, LLC ("Lowe's"), files a Notice of Removal of this lawsuit, originally filed in the Circuit Court of Greene County, Missouri, and in support of this Notice of Removal state as follows:

1. This case is a civil action over which this Court has original jurisdiction, pursuant to 28 U.S.C. §1332, and is one which may be removed to this Court pursuant to 28 U.S.C. §1441, *et seq.*
2. On August 7, 2017, Plaintiff Darlene Myrick ("Plaintiff") filed her original Petition to commence the state court case styled *Darlene Myrick v. Lowe's Home Centers, LLC & John Doe*, Circuit Court of Greene County, Missouri, Circuit Division, Case No. 1731-CC01028.
3. Lowe's was served with summons and a copy of the Petition on August 15, 2017.
4. This Notice of Removal is timely in that it is being filed within thirty (30) days of the date upon which Lowe's was served with summons and a copy of the Petition. *See* 28 U.S.C. § 1446(b)(1).
5. Plaintiff's Petition asserts allegations of negligence against Defendant arising out of injuries Plaintiff allegedly sustained from a fall at a Lowe's Home Improvement store in

Springfield, Missouri on June 21, 2016. (*See* Plaintiff's Original Petition that is included in the State Court File, *attached hereto as Ex. A*).

6. Plaintiff alleges she is a citizen of the State of Missouri. (*See* Ex. A, ¶1 and Case Net Docket Information Sheet, *attached hereto as Ex. B*).

7. Defendant is a North Carolina limited liability company with its principal place of business in North Carolina. Its only member is Lowe's Companies, Inc., which is domiciled in North Carolina. (*See* Exs. C through F, *attached hereto*). Therefore, for purposes of this Notice of Removal, Defendant is deemed to be a citizen of North Carolina.

8. Although Plaintiff does not plead a specific amount of damages she seeks to recover, Defendant can establish by a preponderance of the evidence that the amount in controversy requirement is met based upon Plaintiff's allegations of injuries and her requested relief. Where a complaint alleges no specific amount of damages, the removing party in a case based upon diversity of citizenship must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000.00. *In re Minn. Mut. Life Ins. Co. Sales Practice Litig.*, 346 F.3d 830, 834 (8th Cir. 2003); *Bell v. Hershey Co.*, 557 F.3d 953, 956 (8th Cir. 2009).

9. In her Petition, Plaintiff asserts that she sustained injuries and was treated for an injury to her ankle, **a severe back injury requiring surgery**, and the detachment of a previously implanted device necessitating surgery. (*See* Plaintiff's Petition included in Ex. A, at ¶ 18)(emphasis added).

10. Moreover, Plaintiff is seeking damages in the form of lost wages, medical expenses, loss of future earnings, diminution of earning capacity and pain and suffering. (*See* Plaintiff's Petition included in Ex. A, at ¶ 18)(emphasis added).

11. Based upon the foregoing evidence, Defendant has proven by a preponderance of the evidence that the amount in controversy exceeds \$75,000.000. Accordingly, this Court has proper subject matter jurisdiction over this case pursuant to 28 U.S.C. §1332.

12. Finally, under 28 U.S.C. §1441, the fact that Plaintiff has attempted to name a John Doe defendant in this matter is irrelevant for diversity purposes as the citizenship of defendants sued under fictitious names is to be disregarded. *See* 28 U.S.C. §1441(b)(1).

WHEREFORE, Defendant prays that the above-captioned action be removed from the Circuit Court of Greene County, State of Missouri, to this Court.

HEPLERBROOM, LLC

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PROOF OF SERVICE

I hereby certify that I electronically filed on this 22nd day of August, 2017, the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing and via facsimile to the following:

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/s/ Justin L. Assouad